

## 2005 IDOR PRACTITIONERS' MEETING QUESTIONS AND ANSWERS

### Question:

Over the past 2 ½ years, the IDOR legal division has a rather dismal record of responding to private letter ruling requests. In many instances, it has taken literally years for the Department to answer requests for private letter rulings, although lately it appears that the new General Counsel has made catching up with the private letter ruling backlog a priority. Would the Department explain how it views the priorities of the legal division in Springfield and where it views responding to private letter requests in the list of priorities?

### Answer:

*We have adopted, within the last few months, a new process for reviewing and responding to PLR requests. We now have a PLR and Policy Committee consisting of a number of lawyers and auditors. Our purpose is to develop a thoughtful, consensus approach to identifying a clear legal policy on those issues worthy of being addressed through PLRs or GILs.*

*The Committee meets every four to six weeks to discuss thoroughly the issues raised by any such requests and to ensure that we have a consensus response. This approach has resulted in several conclusions: (1) Nexus inquiries are so factual intensive that they likely will not result in a PLR; (2) Highly complex transactions or business structures may not justify PLR letters because minor factual changes could well result in different tax treatment. Once a PLR is issued, however, there will be an assumption by both the taxpayer and our Audit unit that the tax treatment has been decided upon. Therefore, unless a taxpayer or its professional red flags all factual changes relevant to the PLR, errors in tax treatment may well occur. Issuing a PLR in such cases helps no one; (3) PLR and GIL requests may well point out an area of law which needs clarification, whether through legislation, rule or regulation. We may, therefore, conclude that a better way to deal with the issue addressed in the request is through legislation or rule. If so, we will so notify the requestor.*

*One of the goals of the PLR Committee is to push all requests through the process on a relatively expedited basis. This goal will, of course, be affected by the complexity of the request, the number of pending requests and the work loads of our lawyers.*

*We welcome any suggestions for further improvement.*

**Question:**

**Over the past 2 ½ years, the IDOR legal division appears to have placed responding to requests for general information letters toward the bottom of its list of priorities. It appears that in many instances, rather than responding to a request for a response to the specific questions posed by the author of the request, the Department merely provides a citation to Department regulations which may or may not provide an answer to the question raised. Would the Department explain its current policy on responding to requests for general information and how the Legal Division views these requests in terms of its priorities.**

**Answer:**

*All but the most routine GILs are being handled in the same manner as PLRs. If our response is deemed inadequate, please contact the author of the GIL.*

**Question:**

**At a recent meeting of the Director's Advisory Group, a representative of the Governor's Office made a presentation to the Group on efforts to "streamline" agency regulations. Would the Department provide an update as to this effort and explain the actions that are being taken by the Department in this regard?**

**Answer:**

*We continuously review all of our procedures both for reasons of efficiency and cost control. We welcome your suggestions.*

**Question:**

**The Department's audit division maintains an Audit Manual that provides instructions to Department audit staff. Unlike many other states, over the years the Department has refused to make any of the contents of the audit manual public. In the past when declining to release this information, prior administrations of the Department have cited Section 7z of the Freedom of Information Act and have indicated that the Audit Manual contains information related to various "tolerances" that should not be made available to the general public. However, it appears that the Audit Manual also contains statements of the Department's position on various issues of interpretation and implementation of the tax acts administered by the Department. It appears that this information is much more complete, in many instances, than the statements of Department policy contained in the Department's administrative rules. Would the Department comment on whether this is, in fact the case? Will the Department make available a "cleansed" version of the Audit Manual to the public that eliminates any "tolerances" and other similar information in the interest of openness even though it may not be required to do so by the Freedom of Information Act? What policies and procedures does the**

**Department have in place to ensure that the statements of position and interpretation contained in the Audit Manual are communicated to the public and are incorporated into the Department's administrative regulations?**

**Answer:**

- *Generally, the information contained in the Department's Audit Manuals are no more specific than the information contained in the Department's Regulations.*
- *We would not plan on making a cleansed version of the manual available. We simply do not have the resources to consider creating and maintaining a cleansed version of the Audit Manuals as well as a maintaining a complete version for our staff.*
- *The Audit Bureau's Audit Manuals have been reviewed by the attorneys in Legal Services to make sure that the manuals are legally correct and properly reflect the law and the Department's administrative regulations. The Audit Bureau cannot make any changes to the Audit Manuals unless and until the changes have first been reviewed and approved by Legal Services.*

**Question:**

**Real Estate Transfer Tax:**

**For purposes of the controlling interest tax that was added to the statute last year, please give more explanation about how to measure common ownership. Do you look all the way up a chain of entities?**

**For corporate groups, how do you determine whether there is a taxable transfer of a "real estate entity"? For example, assume that a manufacturing company has a 100% change in ownership. The parent uses a separate wholly-owned subsidiary to own all of the real estate used in its manufacturing business. Is that subsidiary a "real estate entity"? Or do you conclude that there is no "real estate entity" because you look at the parent and subsidiary as a combined group?**

**Answer:**

*Yes, the Department looks at the entire chain of title. (The Department's regulations, Section 120.20 Legal and Technical Interpretations, discusses several examples involving transactions with multiple ownership groups and common ownership.)*

*The statutory definition of "real estate entity" means any person including, but not limited to, any partnership, corporation, limited liability company, trust, other entity, or multi-tiered entity, that exists or acts substantially for the purpose of holding directly or indirectly, title to or beneficial interest in real property. There is a rebuttable presumption that an entity is a real estate entity if it owns, directly or indirectly, real property having a fair market value greater than 75% of the total fair market value of all*

*the entity's assets determined without deduction for any mortgage, lien or encumbrance."*

*The subsidiary above is clearly a "real estate entity" since it was created for the purpose of holding the real estate. The real issue is whether there is a taxable "controlling interest" due to the fact that the subsidiary is wholly owned. In this case, the answer is Yes, the transaction is subject to the RETT. The 100% change in ownership of the manufacturing company is a change in ownership. Ownership and control of the real estate subsidiary was also transferred and RETT is due.*

**Question:**

**The Department's taxpayer assistance function appears to be short staffed. Attempts to reach the taxpayer assistance division by telephone seem to often result in long waiting times on hold. Would the Department discuss its current priorities with respect to the provision of taxpayer assistance? In addition, it is virtually impossible to reach a member of the Department's legal staff by telephone. While it is understood that the legal division may be understaffed, would the Department comment on its apparent policy of not providing access to legal division?**

**Answer:**

*The department has made a significant investment in answering questions from taxpayers. The department is attempting both to offer and to make taxpayers and tax professionals aware of self-service options that will allow taxpayers to get the information that they need without having to talk to one of our taxpayer service representatives.*

*The department has:*

- *Acquired a product that allows taxpayers to ask questions on line and return a list of similar questions and answers.*
- *Upgraded its search engine to a Google product that returns useable information on its web site.*
- *Continued to add automated response options to its phone system.*
- *Redone its web site to make it more user friendly and encourage its use by taxpayers.*

*All of these things help taxpayers get information without calling the department, increasing the time our taxpayer service representatives are available for the more complex calls from tax professionals.*

*The department is also taking steps to see what can be done to expedite the payment of income tax refunds, an action that we believe will reduce the number of calls that we receive from taxpayers asking where there refunds are, again freeing our professional staff for the more complex questions.*

*In addition, the Department is in the process of adding 10 additional taxpayer services representatives specifically for our 800 number.*

**Question:**

**Over the past 2 ½ years, the IDOR legal division has proposed and adopted few regulations. While the Department has adopted a number of regulations that address some of the Governor’s legislation eliminating various credits, it appears that prior Department efforts to fill in gaps in existing Department regulations, update regulations to reflect case law and private letter rulings have stagnated. For example, the Illinois income tax rules fail to provide rules that set forth the Department’s policies with respect to implementation of some of the fundamental definitions under the Act, such as the definition of what is a transportation company. Would the Department explain its priorities in the area of rulemaking for the next year?**

**Answer:**

*Due to retirements, departures and staffing restraints over the past few years, the Department’s legal staff has not been able to amend or propose regulations with the same frequency as it has in the past. In recognition of this problem, the Department is filling critical vacancies, realigning responsibilities and streamlining internal procedures so that the legal staff can once again focus on drafting and adopting regulations to better assist taxpayers and tax practitioners. The Department drafts and proposes regulations based on necessity of clarification and guidance.*

**Question:**

**Section 3-8 of the Uniform Penalty and Interest Act {35 ILCS 735/3-8} contains a reasonable cause exception which expressly allows a taxpayer to protest the imposition of a penalty on the basis of reasonable cause without protesting the underlying tax liability as follows:**

**The penalties imposed under the provisions of Sections 3-3, 3-4, 3-5, and 3-7.5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department. A taxpayer may protest the imposition of a penalty under Section 3-3, 3-4, 3-5, or 3-7.5 on the basis of reasonable cause without protesting the underlying tax liability.**

**The Department does not appear to have any uniform procedures allowing a taxpayer to protest a penalty after a tax has been assessed and/or paid. Rather, the Department routinely refers such matters to the Board of Appeals. There are many situations where the underlying tax has been satisfied with the subsequent penalty notice following--often many months in arrears. Does the Department plan to remedy this situation such that a taxpayer has options before filing a BOA-1 petition?**

**Answer:**

*The Department is aware of the concerns expressed in this question and is reviewing the lack of uniform procedures. The Department hopes to develop a process that would allow taxpayers to remedy the described situation in a manner other than filing a petition with the Board of Appeals in the near future.*

**Question:**

**Aircraft Use Tax:** Please give more explanation about the facts and reasoning for the example in Reg. 152.101(a)(3), which states that the transfer of an airplane in a corporate restructuring is taxable. Does the level of common ownership matter? For example, transfers between 100% owned entities are commonly done for no consideration. Also, does the form of the transfer matter? For example, would the result change if the transfer was done as a merger? Taxing this type of corporate transfer seems inconsistent with the general sales/use tax rules, although the Aircraft Use Tax could be viewed as a completely separate, stand-alone tax.

**Response:**

*The example in Section 152.101(a)(3) reads as follows:*

“3) A multi-state corporation leases a corporate aircraft from a related entity to transport its corporate executives on business travel throughout the United States. The aircraft is registered and hangered outside Illinois. As part of a corporate restructure, ownership of the aircraft will be moved to a new entity. The transfer of both possession and ownership of the aircraft will occur outside Illinois after June 30, 2003 and the transfer of the aircraft to the new entity will qualify as a tax-free capital contribution under the Internal Revenue Code. After completion of this restructuring the aircraft will be based in Illinois. This transfer is a taxable event in Illinois and Aircraft Use Tax is incurred.” (86 Ill. Adm. Code 152.101(a)(3))

1. The first question is “Does the level of common ownership matter?” The answer is “No.” Regardless of common ownership, the transfer is taxable. Under the Aircraft Use Tax Law (35 ILCS 157/10-1 et seq.), tax is due for the privilege of using an aircraft in this State, whether it is acquired by gift, transfer, or purchase. The Aircraft Use Tax is triggered if the transaction is between two separate legal entities. No distinction is made by the Act as to whether the entities are related entities.
2. The second question is “Does the form of the transfer matter?” The answer is “Yes.” While a transfer of aircraft between related entities is taxable under the Aircraft Use Tax, if the transfer results from a merger or consolidation, then no tax is due. That result is in accordance with the provisions of Section 11.50 of the Business Corporation Act of 1983. (805 ILCS 5/11.50) That Section reads, in part, as follows:

*“(a) When such merger or consolidation has been effected:*

*\* \* \* \**

*(2) The separate existence of all corporation parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.*

*\* \* \* \**

*(4) Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as of a public or a private nature, of each of the merging or consolidating corporations; and all property, real, personal, and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.*

*(5) Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted to judgment as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporations shall be impaired by such merger or consolidation. \* \* \* \**

*When corporations are merged or consolidated, as a matter of law, the new corporation takes over the prior corporation’s liabilities and benefits as if it were the prior corporation. There is not a “transfer” between two separate legal entities, rather, one entity becomes another entity, or is consolidated into a separate entity, while the original entity ceases to exist. A transfer that is taxable under the Aircraft Use Tax does not occur in these instances.*

#### **Question:**

**Sales/use tax question related to the proper imposition of tax on seminar materials and handouts distributed in connection with professional seminars.**

#### **Background:**

**During the 2000 Practitioners Meeting, the Illinois Department of Revenue (ILDOR) addressed the issue in Questions and Answers #2 “Unbundled Books (ROT) and Seminar (Service – NT)”.**

**In summary, the ILDOR took the position that the transfer of reference materials in connection with a seminar may create a ROT tax liability for the seminar provider and a complementary Use tax liability for the seminar attendee.**

**On its July 2004 Regulatory Agenda, the ILDOR listed the project of drafting a regulation specific to the taxation of seminar materials.**

**As of the September 9, 2005 issue, no such proposed regulation has posted in the Illinois Bulletin.**

- a. What is IDOR's current position regarding the proper taxation of seminar materials?**
- b. What is the status of rule making regarding the proper taxation of seminar materials?**

***Answer:***

*There are currently no regulations outlining the Department's treatment of tangible personal property transferred as part of a seminar. Instead, the Department's policy has been developed through letter rulings. See, for example, ST-95-0085-GIL; ST-97-0184-GIL; and PLR-97-0003-PLR. These letters state that standard seminar materials, such as reference books and workbooks, are subject to Retailers' Occupation Tax whether the materials are sold separately or as part of the total tuition charge for a seminar. If the materials are sold as part of the tuition charge, a seminar provider must allocate the amount for the selling price of the books and charge tax on that amount. Otherwise, a Department auditor will determine the amount according to his best judgment and information that should be allocated for the selling price of the materials and calculate the tax owed along with penalties and interest. This position was based upon the standard used in *Spagat v. Mahin*, 50 Ill.2d 183 (1971) to determine whether a business is essentially a service or retail operation. The standard provides that if the article sold has no value to the purchaser except as a result of services rendered and if the transfer of the item to the purchaser is an actual and necessary part of the service rendered, then the vendor is engaged in a service occupation. If, however, the item sold is the substance of the transaction and the service is merely incidental to the transfer of the article sold, then the vendor is engaged in the business of selling at retail. A determination was made by the Department that generally, the transfer of books and other items in a seminar was most accurately characterized as a retail transaction, and Retailers' Occupation Tax was incurred. However, the Department posited that there were situations when the Service Occupation Tax could apply.*

*The Department is reconsidering this policy. Numerous comments were received objecting to the Department's characterization as a retail transaction; other comments stressed the critical importance of a bright-line standard.*

*As a result, the Department has proposed a regulation setting forth what we believe is a bright-line test to clearly guide the taxpayer community. This regulation is currently at the "Revenue Policy Group" stage, and will soon be (if it is not currently) posted on the Director's Advisory Group website for comments.*



**Question:**

**There are rumors that the Department is considering disbanding the Informal Conference Board, or somehow modifying the pre-assessment informal conference process. Would the Department comment on its plans in this regard, if any. Would the Department provide an update as to the activities of the ICB. How many cases are currently pending before the ICB? How do those cases break down between sales tax and income tax? Would the Department provide information as to the disposition of the cases that go to ICB? What percentage of the audits that go to ICB end up as “agreed” audits. Would the Department break down those percentages between sales tax cases and income tax cases?**

**Answer:**

*The Department is not considering disbanding the Informal Conference Board. There are changes being proposed with respect to the regulations governing the operation of the Informal Conference Board, which clarify procedures before the Informal Conference Board and allow the Director to expand the size of the Board. The draft amendments will be posted to the Director’s Advisory Group website. As soon as this review process is finished, the proposed amendments will be filed with the Secretary of State.*

*Current ICB Caseload (as of 9/16/05):*

*Total Cases: 196*

*Sales Tax: 86*

*Income Tax: 110*

*Total Proposed Assessments: \$75,087,783*

*Sales Tax: \$7,507,234*

*Income Tax: \$67,580,549*

*Total Proposed Claim Denials: \$36,345,016*

*Sales Tax: \$6,205,566*

*Income Tax: \$30,139,450*

*ICB Cases Closed in 2004:*

*Total Cases: 228*

*Sales Tax: 148*

*BIT: 47*

*IIT: 25*

*Misc: 8*

*Disposition of 228 Closed Cases (percentages are not broken out by type of tax):*

*Agreed: 159 (70%)*

*Unagreed/Protest: 36 (16%)*

*Unagreed/No Protest: 33 (14%)*

**Question:**

**With respect to ICB, there are some in the practitioner community who feel that, particularly in the income tax area, the ICB conferees tend to conduct a “re-audit” of the particular audit at issue, rather than using ICB to refine audit issues. Would the Department comment on its approach to ICB income tax cases. Would the Department comment on whether this tendency to “re-audit” evidences problems with the Department’s income tax audits?**

**Answer:**

*This question may have arisen because of a general misunderstanding of the audit and ICB process by members of the practitioner community. The Informal Conference Board review occurs prior to the issuance of an assessment or deficiency, so the audits are not closed. Practitioners may be under the belief that the Notice of Proposed Liability, Proposed Deficiency or Proposed Claim Denial is issued after all audit reviews have been completed. However, the notices are issued before all reviews are completed. In the past with respect to income tax audits, the Notice of Proposed Deficiency was issued before the audit supervisor’s review of the work papers. This occurred because so many supervisors took advantage of early retirement. There just weren’t enough supervisors to review all audits. In fact, there was no in-state field supervisor for 16 months after the early retirement program. Income Tax audit supervisors are now instructed that the work papers must be reviewed before the notices are issued if they think the taxpayer will seek ICB review.*

*However, the final review of audit work papers by Audit Technical Review still occurs after the ICB matter is concluded. Taxpayers and the practitioner community should be aware that, even if the ICB makes adjustments to the issues raised by the taxpayer, the final figures might either increase or decrease after the final review within the Audit Bureau.*

*In many cases before the Informal Conference Board, the taxpayers failed to turn over documents and information requested by the auditor. Clearly in these situations, there will be a “re-audit” since the documents and information submitted to the ICB will be given to the auditor to review.*

**Question:**

**Illinois income tax – Double Taxation of Wages**

**35 ILCS 5/601(b)(3) provides for a credit for taxes paid to another state by an Illinois resident on income that is included in his base income. The statute does not exclude compensation from base income.**

**Regulation 100.2197 provides in (b) (4) (E) that “compensation paid in Illinois under IITA Section 304(a)(2)(B), as further explained in Section 100.3120 of this part, is not included in double-taxed income, even if another state taxes such compensation.”**

**Section 304(a)(2)(B) states that “compensation is paid in this state if:**

- (i) The individual’s service is performed entirely within this State;**
- (ii) The individual’s service is performed both within and without this State, but the service performed without this State is incidental to the individual’s service performed within this State; or**
- (iii) Some of the service is performed within this State and either the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual’s residence is in this State.**

**This section has now been modified to provide for sourcing of compensation that would otherwise be sourced to Illinois under the above definitions to be treated as earned outside of Illinois for nonresident professional athletes.**

**While this is a start it is clearly discriminatory. As the advisor to the state legislature, will the Department agree to work for passage of amendment to this statute so that compensation earned outside of Illinois by Illinois residents and properly taxed by other jurisdictions will be considered income available for income tax credits?**

**Answer:**

*Prior to amendment by Public Act 94-247, IITA Section 601(b)(3) stated that, "For purposes of this subsection, no compensation received by a resident which qualifies as compensation paid in this State as determined under Section 304(a)(2)(B) shall be considered income subject to tax by another state or states." That sentence was deleted by Public Act 94-247. The instructions to Schedule CR and 86 Ill. Admin. Code Section 100.2197 will be amended to reflect this amendment.*

**Question:**

**Illinois income tax – Foreign Tax Credit**

**35 ILCS 5/601(b)(3) provides a credit for taxes paid to another state. The statute provides that the credit shall be computed using the ratio of “...base income subject to tax both by such other state or states and by this states (as it) bears to this total base income subject to tax by this state...”**

**Regulation 100.2197 recites the language of the statute and adds definitions. Section (b)(1)(B), in summary, states that income that is not included in Illinois base income, such as retirement income, will not result in a credit if it is taxed to an Illinois resident since that income was not included in the resident’s Illinois base income.**

**Publication 111 has been developed by the Department to show how the income taxed by another state is to be determined. It introduces the concept of “equivalency” which can be found in neither the statute nor the regulation.**

**For example, in arriving at the amount of income taxed by California, it adjusts the California income by reducing it by the amount of retirement income deducted in**

arriving at the Illinois base income. (California does not exclude retirement income in computing its taxable income.) The net effect of this adjustment is to diminish the ratio of California income to Illinois income thereby reducing the credit.

Assume an Illinois resident has two sources of income - \$100K from a California partnership and \$100K from an Illinois pension. For simplicity all deductions and exemptions are ignored and the California tax is \$6,000.

	IL1040	CA540	IL1040CR col B
Partnership Income	100	100	100
Retirement Income	100		
Illinois subtraction			
for Retirement Income	(100)		(100)
Base Income	100	100	0
Tax	3	6	
Credit	0		

**What is the authority for the Department's equivalency positions in Publication 111?**

**Answer:**

*IITA Section 601(b)(3) provides:*

*The aggregate credit provided under this paragraph shall not exceed that amount which bears the same ratio to the tax imposed by subsections 201(a) and (b) otherwise due under this Act as the amount of the taxpayer's base income subject to tax both by such other state or states and by this State bears to his total base income subject to tax by this State for the taxable year. [emphasis added]*

*The highlighted language clearly indicates that the fraction is those items of base income that are taxed by both states, divided by base income. Because pension income is not taxed by Illinois, it cannot be included in the numerator of the fraction.*

**Question:**

**How does the Department explain the results of the above example using the language of the statute?**

**Answer:**

*The results are not consistent with Publication 111. The relevant portion of that publication provides that the computation of double-taxed income begins with federal adjusted gross income, as reported on Line 13 of the California Form 540NR. That amount includes both the \$100 in partnership income and the \$100 in retirement income. Publication 111 requires the taxpayer to then subtract the \$100 in retirement income for which a subtraction is allowed on Form IL-1040, Line 5. The result is \$100, not zero as shown in the example.*

**Question:**

**The Department issued Informational Bulletin, FY 2005-10, "Refund Claim for RAR Liabilities Paid Under Amnesty", whereby it described the procedures necessary for a taxpayer to keep such claims from expiring. It has been suggested by certain practitioners that this Bulletin was not necessary in light of IITA Sec. 911(b) {35 ILCS 5/911(b)} which provides a special statute of limitations with respect to refunds caused by a federal change. Would the Department please comment upon and/or clarify the divergent views with respect to this issue?**

**Answer:**

*The information bulletin was published to give guidance to taxpayers who had estimated the Illinois income tax effects of an ongoing or anticipated federal audit in order to pay the resulting deficiencies under amnesty and avoid penalties and interest. 86 Ill. Admin. Code Section 521.105(l) makes express provision for this situation, and states that, contrary to the general rule that no claim for refund may be filed with respect to an amnesty payment, refund claims could be filed if the federal audit change was less than expected.*

*In general, IITA Section 911(a) requires a refund claim to be filed within three years after the date the return was filed or within one year after the payment of tax, whichever is later. IITA Section 911(d)(2) provides that, if a claim is filed more than three years after the return was filed, the refund cannot exceed the amount of tax paid within one year immediately prior to the claim.*

*IITA Section 911(b)(1) creates an exception to these rules, by allowing a refund claim based on a federal change that must be reported under IITA Section 506(b) at any time within two years after the federal change report was due. That section states, in part:*

*The amount recoverable pursuant to a claim filed under this Section shall be limited to the amount of any overpayment resulting under this Act from recomputation of the taxpayer's net income, net loss, or Article 2 credits for the taxable year after giving effect to the item or items reflected in the alteration required to be reported.*

*Assuming that the limitations periods in IITA Section 911(a) for claiming a refund of an amnesty payment have expired, a federal audit that increases income, but by less than the amount estimated, would not allow a refund claim under IITA Section 911(b)(1). No reduction in Illinois net income or tax results from the increase in income determined in the federal audit. The reduction in Illinois tax liability is caused by the fact that the federal income on which the amnesty liability was computed is greater than the amount shown on the taxpayer's federal return. Because the refund does not result from the federal change, the limitation in IITA Section 911(b)(1) is zero.*

*This statute cannot be interpreted any other way without making its two-year limitations period meaningless. If any change in federal income reopened the statute of limitations to allow a refund based on using the correct amount of federal income, a taxpayer who failed to file a federal change refund claim within two years after a reduction in federal income could simply file an amended federal income tax return increasing its taxable*

*income by \$1, and then file an Illinois refund claim based on the original federal change to its taxable income minus the \$1. The correct reading of the statute is that, because the \$1 increase in federal taxable income is not the cause of the decrease in the Illinois tax liability, it cannot reopen the statute of limitations for claiming a refund of that decrease.*

**Question:**

**In 2004, the Department had an ambitious, albeit unsuccessful, legislative agenda. This past spring the Department had relatively few legislative proposals. What is the Department's legislative agenda for the fall veto session and for next spring? For example, will the Department attempt, yet again, impose tax on licenses of computer software in either the fall veto session or the spring session? Will the Department work with the taxpayer community to fix the problems with the bonus depreciation decoupling?**

**Answer:**

*The Department has not yet finalized its legislative agenda. The Department is interested in fixing the problems associated with bonus depreciation decoupling and is willing to work toward fixing those problems.*

**Question:**

**Does the Department have any plans to address the sourcing of intangibles under the sales factor of the Illinois Income Tax Act through legislation?**

**Answer:**

*The Department has not made any determination on the sourcing of intangibles under the sales factor of the Illinois Income Tax Act.*

**Question:**

**In the spring session, it was rumored that the Department, or the Governor's office, proposed to tax sales of motor fuel that were to be shipped to out-of-state buyers. Such an enactment would seem to unconstitutional on its face. Are there any plans to revive this proposal either in the fall veto session or in the spring? In either case, would the Department comment on the proposal and explain how it determined that such an enactment could be constitutional?**

**Answer:**

*The Department of Revenue has not determined whether it will propose legislation to tax sales of motor fuel to out-of-state buyers.*

**Question:**

**While the Department appears to have been successful in obtaining the ability to hire new auditors, the Department appears to be chronically understaffed in other areas and, at least from the view of some of the practitioner community, service to the public is suffering. For example, one of the statutory duties of the Department is to provide advice and assistance in the property tax area. The Department appears not to have replaced a number of the senior persons in the Property Tax Division who took early retirement over 2 ½ years ago. In addition, it appears that the Department has not replaced the two property tax attorneys on the Department's legal staff that provided assistance to local authorities and to practitioners. Does the Department have plans to replace any of these folks?**

***Answer:***

*We hope to receive the funding necessary to hire additional attorneys to address needs in several areas, including the Property Tax Division.*

**Question:**

**We are advised that non-union Department employees have not received salary adjustments during the term of the current Governor. As a result, in the audit division many auditors are paid better than their supervisors. How can the Department attract and retain competent and experienced staff in light of these conditions? Would the Department comment on what appears from the outside to be a continuing exodus of experienced staff?**

***Answer:***

*The current economic circumstances of the State certainly are challenging. We hope that all employees, including supervisors, are patient while these problems are resolved. We hope to be able to reward the patience of our employees at the earliest opportunity.*